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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/621,085	07/21/2000	Andreas Kruger	569.38791X00	4806

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EXAMINER	
MILLER, BRANDON J	

ART UNIT	PAPER NUMBER
2683	

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/621,085	KRUGER ET AL.	
	Examiner	Art Unit	
	Brandon J. Miller	2683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *9-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *9-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 July 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by Skala.

Regarding claim 26 Skala teaches a decision unit coupled to an operable device, which is used in vehicle (see col. 2, lines 56-62 and col. 4, lines 26-30). Skala teaches the decision unit comprising an input for receiving sensor signals (see col. 3, lines 65-68 and col. 4, lines 1-2 & 26-28). Skala teaches the decision unit determining vehicle-specific conditions over a period of time of vehicle operation by evaluating the received sensor signal (see col. 3, lines 65-68 and col. 4, lines 1-6). Skala teaches converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle (see col. 3, lines 42-49 & 59-67 and col. 4, lines 3-6 & 26-28). Skala teaches an output for outputting an output signal, which is used for changing the operating states of the operable device connected to the decision unit (see col. 4, lines 26-42).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skala in view of Oda.

Regarding claim 9 Skala teaches an operable device to be used in a vehicle (see col. 2, lines 56-62 and col. 3, lines 12-18). Skala teaches an operating panel through which a user can cause at least one of producing existing operating states or changing existing operating states of the operable device (see col. 2, lines 60-62 and col. 3, lines 59-61). Skala teaches a decision unit, coupled to the operating panel, which receives data (see col. 4, lines 21-28). Skala teaches determining vehicle-specific conditions over a time period of vehicle operation by evaluating the received data (see col. 3, lines 42-49 & 59-67). Skala teaches converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle (see col. 3, lines 42-49 & 59-67 and col. 4, lines 3-6 & 26-28). Skala teaches changing the existing operating states of the operable device according to whether the actual driving situation has met the conditions specified in the driving profile (see col. 4, lines 3-5 & 26-42). Skala does not specifically teach blocking or releasing the existing operating states of an operable device according to whether the actual driving situation is dangerous or non-dangerous. Oda teaches blocking or releasing the existing operating state of an operable device (see col. 3, lines 7-21) according to whether an actual driving situation is considered dangerous or non-dangerous (see col. 4, lines 9-25 & TABLE). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the control circuit in Skala adapt to include blocking or releasing the existing operating states of an operable device according to whether the actual driving situation is dangerous or non-dangerous because vehicle speed can be a factor when

determining dangerous and non-dangerous driving conditions and this would allow for the operational state of an operable device too be conveniently changed depending on the operational state of a vehicle.

Regarding claim 10 Skala teaches an operable device to be used in a vehicle (see col. 2, lines 56-62 and col. 3, lines 12-18). Skala teaches an operating panel through which a user can cause at least one of producing existing operating states or changing existing operating states of the operable device (see col. 2, lines 60-62 and col. 3, lines 59-61). Skala teaches a decision unit, coupled to the operating panel, which receives data (see col. 4, lines 21-28). Skala teaches determining vehicle-specific conditions by measuring fluctuations of a driving speed of the vehicle over a time period and changes the existing operating states of the operable device based on the measured fluctuation and (see col. 3, lines 59-67 and col. 4, lines 26-28 & 34-56). Skala does not specifically teach blocking or releasing the existing operating state of the operable device. Oda teaches blocking or releasing the existing operating state of an operable device (see col. 3, lines 7-21). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the control circuit in Skala adapt to include blocking or releasing the existing operating states of an operable device because this would allow for the operational state of an operable device do be conveniently changed depending on the operational state of a vehicle.

Regarding claim 11 Oda teaches an operable device that is suitable for receiving and/or transmitting data (see col. 3, lines 57-59 and col. 4, lines 61-63).

Regarding claim 12 Oda teaches a device as recited in claim 11 and is rejected given the same reasoning as above.

Regarding claim 13 Skala teaches an operable device with equipment that collects information on the conditions and/or states under which or in which an operable device is currently being operated, and that transmits the information as data to a decision unit (see col. 3, lines 11-18 & 59-67 and col. 4, lines 21-27).

Regarding claim 14 Skala teaches a device as recited in claim 13 and is rejected given the same reasoning as above.

Regarding claim 15 Skala teaches a device as recited in claim 13 and is rejected given the same reasoning as above.

Regarding claim 16 Skala teaches a device as recited in claim 13 and is rejected given the same reasoning as above.

Regarding claim 17 Oda teaches an operable device with a receiving unit, wherein data received by the receiving unit is also transmitted to a control processor to be used alone or together with other data to block or release certain operating states of an operable device (see col. 1, lines 59-67, col. 2, lines 13-21, and col. 3, lines 56-60).

Regarding claim 18 Oda teaches a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 19 Oda teaches a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 20 Oda teaches a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 21 Oda teaches a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 22 Oda teaches a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 23 Oda teaches a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 24 Oda teaches a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 25 Skala teaches a method of controlling an operable device, which is used in a vehicle (see col. 2, lines 56-62 and col. 3, lines 12-18). Skala teaches a controlling an operating panel by a user to cause at least one of producing existing operating states or changing existing operating states of the operable device (see col. 2, lines 60-62 and col. 3, lines 59-61). Skala teaches receiving data in a decision unit, which is coupled to the operating panel (see col. 4, lines 21-28). Skala teaches determining vehicle-specific conditions over a time period of vehicle operation by evaluating the received data (see col. 3, lines 42-49 & 59-67). Skala teaches converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle (see col. 3, lines 42-49 & 59-67 and col. 4, lines 3-6 & 26-28). Skala teaches changing the existing operating states of the operable device according to whether the actual driving situation has met the conditions specified in the driving profile (see col. 4, lines 26-42). Skala does not specifically teach blocking or releasing the existing operating states of an operable device according to whether the actual driving situation is dangerous or non-dangerous. Oda teaches blocking or releasing the existing operating state of an operable device (col. 3, lines 7-21) according to whether an actual driving situation is considered dangerous or non-dangerous (see col. 4, lines 9-25 & TABLE). It would have been obvious to one of ordinary

skill in the art at the time the invention was made to make the control circuit in Skala adapt to include blocking or releasing the existing operating states of an operable device according to whether the actual driving situation is dangerous or non-dangerous because vehicle speed can be a factor when determining dangerous and non-dangerous driving conditions and this would allow for the operational state of an operable device too be conveniently changed depending on the operational state of a vehicle.

Response to Arguments

Applicant's arguments filed 8/15/2005 have been fully considered but they are not persuasive. Regarding independent claims 9-10 and 25-26 the combination of Skala and Oda teach a device as claimed. Skala teaches determining the volume of an audio device in a vehicle and determining the speed of a vehicle (see col. 3, lines 42-49 & 56-67). Skala also teaches repeating these steps for different volume levels and speeds (see col. 4, lines 3-6 & 26-28). These vehicle specific determinations are made during a time in which the vehicle is operating and therefore relates to the claimed "determining vehicle-specific conditions over a time period of vehicle operation". Skala teaches storing different volume level and speed pairs and determining the operating state of the operable device based on these stored combinations (see col. 4, lines 26-28 & 34-40), which relates to the "driving profile" as claimed. Oda teaches transmitting a switch signal based on the speed of the vehicle being above or below a predetermined speed (col. 3, lines 7-12). The signal can switch the operable device to either a phone-answering mode or a suspending mode (see col. 3, lines 13-20). The suspending mode is stated as preferable from the viewpoint of preventing the possibility of a traffic accident (see col. 4, lines 11-14 and TABLE), which relates to dangerous and non-dangerous driving situations.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kraft U.S Patent No. 6,463,278 discloses a telephone automatic mode.

Alperovic U.S Patent No. 6,233,448 discloses a system, method and apparatus for automatic feature activation/deactivation based upon positioning.

Gehlot U.S Patent No. 6,060,989 discloses a system and method for preventing automobile accidents.

Person et al. U.S Patent No. 5,483,692 discloses an automatic variable radio volume control system.

Hirayama U.S Patent No. 6,044,262 discloses a wireless device with automatic auto-response setting function.

Vallancourt U.S Patent No. 6,263,282 discloses a system and method for warning of dangerous driving conditions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon J. Miller whose telephone number is 571-272-7869. The examiner can normally be reached on Mon.-Fri. 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 20, 2005

WILLIAM TROST
SUPERVISORY PATENT EXAMINER
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